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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,235	12/05/2003	Roger Thomas	P-US-PR 1112	9207
28368 7590 04/10/2008 THE BLACK & DECKER CORPORATION 701 EAST JOPPA ROAD, TW199 TOWSON, MD 21286				
EXAMINER				
SELF, SHELLEY M				
ART UNIT		PAPER NUMBER		
3725				
MAIL DATE		DELIVERY MODE		
04/10/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/729,235

Applicant(s)

THOMAS, ROGER

Examiner

Shelley Self

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-10 and 12-21 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) _____ is/are allowed.
6) ☐ Claim(s) 3-10 and 12-21 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 01 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/888)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

The amendment filed on March 20, 2008 has been considered but is ineffective to overcome the prior art reference.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to the claim there is insufficient antecedent basis for the recitation, "the aperture" because there are several apertures previously recited in the parent claim(s); therefore it is unclear which aperture is being referred to by the recitation "the aperture". Clarification is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15, 3 and 16-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Eichberger et al. (5,815,934). With regard to claims 15-20, Eichberger discloses a planer

comprising a shoe, the shoe defining an aperture (fig. 1); a body mounted on the shoe (fig. 1), the body defining an exhaust passage (25) having a first exhaust aperture on a first side of the body, and a second exhaust aperture on a second side of the body (26, 27; col. 3, lines 55-58) and including a wall, the wall defining a recess (18); a cutting drum (15) rotatably mounted within the recess, the cutting drum projects through the aperture in the shoe; an expulsion aperture (28, 29; col. 3, lines 59-67) connecting said recess to said exhaust passage (col. 3, lines 64-67; a motor (8); a cutting blade mounted a periphery of the cutting drum (col. 3, lines 18-20) an airflow generator (11); a conduit defined within the body (30); wherein said exhaust passage (25) is configured so that the airflow directed into the exhaust passage flows in a substantially upward direction to entrain and remove debris and a removably deflector (54), the deflector insertable through one of the first and second exhaust apertures and connectable to the exhaust passage for guiding the airflow and entrained debris from within the body to outside of the body.

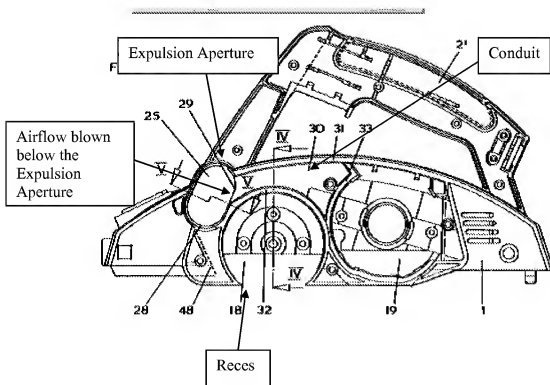
As to the recitation, *"wherein said exhaust passage is configured so that the airflow directed into the exhaust passage flows..."* Examiner notes the term into is understood as the airflow going *into* the passage. Eichberger teaches this airflow is directed in a substantially upward direction because the airflow is coming from a lower location, i.e. the cutting drum is positioned below the exhaust passage therefore the airflow and debris from the cutting drum is directed in a substantially upward direction so as to facilitate removal of the debris via the exhaust passages

With regard to claim 3, Eichberger discloses the cutting action of the blade causes debris created by the cutting to be ejected from the recess (18) through the expulsion aperture (29) and into the exhaust passage (25) substantially along a first direction and the airflow in the conduit is

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directed within the body to a point below the expulsion aperture (Examiner notes the aperture 29 and the airflow from fan 11 through conduit 30 b/c the aperture height is greater than the conduit 30 height, the air is blown at a point below the aperture 29) and then is blown across the expulsion aperture substantially along a second direction where the first direction and the second direction of airflow intersect at an acute angle (fig. 3).

With regard to claim 21, as best as can be understood, Eichberger discloses wherein said expulsion aperture is located adjacent the aperture in the shoe.



Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15, 3, 5-10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maier (DE3542263) in view of Eichberger et al. (5,815,934). With regard to claims 15, 9, 10 and 12, Maier discloses a planer comprising a shoe, the shoe defining an aperture (fig. 1); a body mounted on the shoe (fig. 1), the body defining an exhaust passage (fig. 1) having a first exhaust aperture on a first side of the body, and a second exhaust aperture on a second side of the body (17) and including a wall, the wall defining a recess (fig. 1): a cutting drum (11) rotatably mounted within the recess, the cutting drum projects through the aperture in the shoe; an expulsion aperture (fig. 1) connecting said recess to said exhaust passage (fig. 1); a motor (8); a cutting blade mounted a periphery of the cutting drum (fig. 1), a conduit defined within the body (30) and a pivotally mounted flap (21). Maier does not disclose an airflow generator or a removable deflector.

It would have been obvious to the skilled artisan at the time of the invention to construct Maier's deflector (22) to be removable because forming inseparable, i.e., removable parts what was formerly constructed as an integral structure requires only routine skill in the art. *Nerwin v. Erlicman*, 168 USPQ 177, 179.

Moreover, as noted above, Eichberger teaches in a similar art, the use of an airflow generator (11) and a removable deflector to improve airflow for efficient discharging of debris. Because the references are from a similar art and deal with a similar problem, i.e., debris discharge from a planar it would have been obvious at the time of the invention to provide, Maier

with an airflow generator and removable deflector so as to improve airflow for efficient debris discharge as taught by Eichberger.

With regard to claim 3, Maier discloses wherein a wall in the body also defines an expulsion aperture and the conduit (23) is connected to the recess (fig. 1) by the expulsion aperture (16) and the cutting action of the blade causes debris created by the cutting to be ejected from the recess through the expulsion aperture (16) and into the conduit substantially along a first direction and the airflow in the conduit is directed within the body to a point below the expulsion aperture and then is directed by the conduit to be blown across the expulsion aperture along a second direction the first direction of the debris and the second direction of the airflow intersect at an acute angle. Examiner notes the airflow traveling along a line, the debris/chips traveling along a second different line the two lines to intersect so as to allow the airflow to blow/direct the debris out of the exhaust aperture. Because the two lines of direction intersect and supplemental angles are formed, one angle being acute and one being obtuse, thus Maier obviously discloses intersecting of the travel directions at an acute angle.

With regard to claims 5 and 6, Maier discloses wherein the conduit (23) directs the airflow over the deflector (22) prior to directing the airflow to the point below the expulsion aperture. Examiner notes the ability of the deflector to rotate facilitates direction airflow over the deflector prior to directing the airflow below the expulsion aperture.

As to the first and second positions (clms. 7, 8), examiner notes the flap (21) to be rotatable, thus positions are determined by the operator, i.e., the operator may stop rotation of the flap at any position within the range of rotation, therefore having at least a first and second position.

With regard to claim 13, it is obvious in Maier that the flap be biased to a first or second position so as to adequately close either a first opening of the exhaust aperture (17) or a second opening so as to allow the debris/chips to be ejected from either side of the body via the exhaust openings (17).

Allowable Subject Matter

Claims 4 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:
For the reasons noted in the Office Action mailed (8/2/06).

Response to Arguments

Applicant's arguments filed March 20, 2008 have been fully considered but they are not persuasive. Applicant's remarks are drawn to the failure of the prior art, Eichberger et al. to disclose or fairly suggest the “*exhaust passage is configured so that the airflow directed into the exhaust passages flows in a substantially upward direction to entrain and remove debris ejected from the recess*”. This argument however is not deemed persuasive. Applicant further argues that the exhaust passage 25 of Eichberger et al. is configured to direct airflow horizontally, not in a substantially upward direction. Examiner concedes that the airflow in the passage 25 of Eichberger et al. is in a substantially horizontal direction; however the airflow into the passage 25 of Eichberger et al is in a substantially upward direction. Examiner notes that Eichberger

teaches two exhaust apertures, a first exhaust aperture on one side of the body and a second exhaust aperture horizontally spaced on the opposite of body from the first exhaust aperture, an exhaust passage extending between the apertures. Eichberger further teaches the exhaust passage (25) positioned above the cutting drum mounted within the recess. Thus during operation airflow is directed *into* the exhaust passage (25) in a substantially upward direction from the cutting drum and recess so as to effectively entrain the debris and chips that result during operation from the cutting drum positioned below the exhaust apertures. Examiner further notes that the airflow in the passage (25) is then directed horizontally so as to eject the debris from either exhaust aperture. However the airflow *into* in the passage is from a substantially upward direction.

Therefore, the claimed invention does not patentably distinguish over the prior art, Eichberger et al. and a rejection in view of Eichberger is proper and made Final.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is 571-272-4524. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shelley Self/
Primary Examiner, Art Unit 3725

April 8, 2008